

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALEATRICE THOMAS,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:20-cv-01723-SAB

ORDER DENYING PLAINTIFF'S
APPLICATION TO PROCEED *IN FORMA*
PAUPERIS WITHOUT PREJUDICE AND
REQUIRING PLAINTIFF TO FILE A LONG
FORM APPLICATION OR PAY THE
FILING FEE

(ECF No. 2)

TWENTY DAY DEADLINE

Aleatrice Thomas ("Plaintiff") filed this action appealing the final decision of the Commissioner of Social Security denying her application for disability benefits. Plaintiff did not pay the filing fee in this action and instead filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. However, Plaintiff's application does not provide sufficient information for the Court to determine if she is entitled to proceed in this action without prepayment of fees. Upon review of Plaintiff's application, she did not check all boxes indicating whether or not she receives specific types of income. Further, Plaintiff's listed expenses are far less than the amount that she is receiving each month and she indicates that she has \$2,000.00 in a checking or savings account.

The Court is unable to determine whether Plaintiff is entitled to proceed in this action without prepayment of fees. Accordingly, the Court will order Plaintiff to complete and file an

Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) – AO
239. If Plaintiff is unwilling to complete and submit the long form application, she must pay the filing fee in full.

Additionally, the Court notes that the complaint states that Plaintiff received the final decision denying her application for benefits on September 20, 2020 and she did not file this action until December 7, 2020. In the Social Security Act, the United States has waived sovereign immunity only for limited judicial review of the Social Security Administration’s final decisions. Mathews v. Eldridge, 424 U.S. 319, 327 (1976). Under 42 U.S.C. § 405(g), “[a]ny individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow.” Congress has strictly limited the Court’s jurisdiction of over Social Security actions. See 42 U.S.C. § 405(h) (“No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein provided.”) Therefore, in order to appeal a final decision of the Commissioner, Plaintiff must demonstrate that she has complied with the requirements of Section 405(g), including that she has received a final decision and that this action is filed “within sixty days after the mailing to [her] of notice of such decision” after a hearing. See 42 U.S.C. 405(g).

Here, it appears on the face of the complaint that Plaintiff has not complied with the requirement that this action be filed within sixty days of the mailing of the final decision. Based on the date of the decision, Plaintiff has missed the deadline to file this action by several weeks and therefore, this court does not have jurisdiction over the appeal. If Plaintiff is granted leave to proceed without prepayment of fees or pays the filing fee, the Court will address the issue by separate order

Based upon the foregoing, it is HEREBY ORDERED that:

1. Plaintiff’s application to proceed *in forma pauperis* is DENIED without prejudice;
2. The Clerk of the Court is directed to forward an Application to Proceed in District

Court Without Prepaying Fees or Costs (Long Form) – AO 239 to Plaintiff;

3. Within **twenty (20) days** of the date of this order, Plaintiff shall either (1) pay the \$402.00 filing fee for this action, or (2) complete and file the enclosed Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) – AO 239; and
4. If Plaintiff fails to comply with this order, this action shall be dismissed for failure to pay the filing fee and failure to comply with a court order.

IT IS SO ORDERED.

Dated: **December 29, 2020**

A handwritten signature in blue ink, appearing to read "James A. Be...", is written over a horizontal line.

UNITED STATES MAGISTRATE JUDGE